



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 11, 2012

Mr. Andrew B. Thompson  
Assistant General Counsel  
Corpus Christi Independent School District  
P.O. Box 110  
Corpus Christi, Texas 78403-0110

OR2012-05175

Dear Mr. Thompson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 450422.

The Corpus Christi Independent School District (the "district") received four requests for communications, formal or informal police reports, and rapid reports related to the discipline, reprimand, or banning of parents from district property during the last five school years. You state some information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101<sup>1</sup>, 552.107, 552.111,

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with Texas Disciplinary Rule of Professional Conduct 1.05 and Texas Rule of Evidence 503, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Thus, we will not address your claims under section 552.101 in conjunction with rules 1.05 and 503. However, we will address your remaining arguments under section 552.101 of the Government Code.

and 552.135 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note the district has redacted some information pursuant to the Family Educational Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student’s consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>4</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). In this instance, you have submitted redacted records for our review. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we generally will not address the applicability of FERPA to any of the submitted documents. Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>5</sup> We note, however, FERPA is not applicable to law enforcement records maintained by the district’s police department (the “department”) that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Upon review, we find portions of the submitted information constitute law enforcement records created and maintained by the department for law enforcement purposes. Thus, these records are not subject to FERPA, and no portion of these records may be withheld on that basis.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov’t Code § 552.107(1). When asserting the attorney-client

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<sup>2</sup>Although you raise section 552.108 of the Government Code as an exception to disclosure, you have provided no arguments in support of this exception; therefore, we assume you have withdrawn it. *See* Gov’t Code §§ 552.301, .302.

<sup>3</sup>We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>4</sup>A copy of this letter may be found on the Office of the Attorney General’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>5</sup>In the future, if the district does obtain parental or an adult student’s consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1)(A), (B), (C), (D), (E). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information in exhibit B consists of communications between campus administrators or the agents or designees of campus administrators and the district’s Office of Legal Services. You state these communications were made to facilitate the rendition of professional legal services. You inform us the confidentiality of the communications has not been waived. Based on your representations and our review, we conclude you have established the communications are protected by the attorney-client privilege. Accordingly, the district may withhold exhibit B under section 552.107(1) of the Government Code.<sup>6</sup>

Section 552.101 excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the common-law right to privacy. Common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment

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<sup>6</sup>As our ruling with regard to this information is dispositive, we do not address your remaining argument against its disclosure under section 552.111 of the Government Code.

of mental disorders, attempted suicide, and injuries to sexual organs). This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You raise section 552.101 in conjunction with common-law privacy as an exception to disclosure of exhibit C. Upon review, we find a portion of exhibit C pertaining to district students is highly intimate and embarrassing and of no legitimate public concern. However, as noted above, the identifying information of the students at issue have been redacted under FERPA. As such, the remaining information in exhibit C does not implicate the privacy interests of any identified students. Furthermore, none of the remaining information in exhibit C is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the district may not withhold any of the information in exhibit C on the basis of section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 also encompasses section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See* Fam. Code § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). Section 58.007 provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

*Id.* § 58.007(c), (e). For purposes of section 58.007(c), a “child” is a person ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). You contend the information in exhibit D involves children engaged in delinquent conduct that occurred after September 1, 1997. However, we are unable to determine the age of the offenders at issue. Accordingly, we must rule conditionally. It does not appear any of the exceptions to disclosure in section 58.007 apply to the information.

Thus, if the information in exhibit D constitutes a record of a juvenile engaged in delinquent conduct who was ten years of age or older and under seventeen years of age at the time of the commission of the crime, the submitted information is confidential pursuant to section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code. However, if the information in exhibit D pertains to an offender who was not ten years of age or older and under seventeen years of age at the time of the commission of the crime, the submitted information is not confidential pursuant to section 58.007(c) and may not be withheld under section 552.101 on that basis. To the extent the information in exhibit D is not confidential under section 58.007 of the Family Code, we will consider your remaining arguments against its disclosure.

Section 552.135 of the Government Code provides the following:

(a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov’t Code § 552.135. We note the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of civil, criminal, or regulatory law. *See id.* § 552.301(e)(1)(A). In this instance, you claim portions of exhibits C and D reveal the identities of district informers. We find the information we have marked reveals the identities of individuals who reported possible violations of law to the department. You do not indicate any of the exceptions in section 552.135(c) apply. *See id.* § 552.135(c). Accordingly, the district must withhold the information we have marked in exhibit C under section 552.135 of the Government Code. To the extent exhibit D is not confidential under section 58.007(c) of the Family Code, the district must withhold the information we have marked in exhibit D under section 552.135 of the Government Code. However, the district has failed to demonstrate how any portion of the remaining information at issue reveals the identity of an informer for section 552.135 purposes. Accordingly, none of the remaining information at issue may be withheld on that basis.

In summary, the district may withhold exhibit B under section 552.107(1) of the Government Code. If the information in exhibit D constitutes a record of a juvenile engaged in delinquent conduct who was ten years of age or older and under seventeen years of age at the time of the commission of the crime the district must withhold exhibit D in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. To the extent the information in exhibit D is not confidential under section 58.007(c) of the Family Code, the district must withhold the information we have marked under section 552.135 of the Government Code. Regardless, the district must withhold the

information we have marked in exhibit C under section 552.135 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Marsh".

Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 450422

Enc. Submitted documents

c: Requestor  
(w/o enclosures)